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84-1881

No. .....

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

MARGARET "PEGGY" HEDGES,

Appellant,

v.

SYLVIA O. ALLINDER as COMMITTEE
for GRACE CATHERINE WOLFE,

Appellee

AN APPEAL FROM THE STATE SUPREME COURT
OF WEST VIRGINIA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

Does the State Supreme (Court Rule 7,) (App. 5) violate "Due Process of Law" by refusing a petition of appeal without a statement of reason or written opinion?

Does that rule have a propensity for permitting political influence to invade the province of the judiciary; and does it interfere with required restraints on the Executive and Legislative branches; and does it permit or promote political oppression?

Does the Constitutional provisions for election of judges for a term serve to defeat the separation of the three branches, by subjecting judges to political pressures and influence thereby violate due process of law?

Did the State Supreme Court's refusal to allow the petitions for appeal emanate from either or both of the latter and was its decision to do so used to avoid arbitrariness by yielding to political influence.

TABLE OF CONTENTS

	Page
Introduction	1
"Opinions" Below	2
Jurisdictional Statement	3
Jurisdictional Grounds in this Court	4
Questions Presented	5
Constitutional and Statutory Provisions	5
Statement of Case	6
Substantiality of Questions Presented	17
Table of Authorities	1a
Notice of Appeal	3a

I

The Political Bias of the Trial Court, and the Role of the Appellee as its Perpetrator	7
A. The Arbritrary and Unconstitutional Decision of the Trial Court	7
B. Documented Proof of Political Influence in the Instant and Companion Cases	8
C. Documentable Proof of Political Influence in Other Cases	11

Page

D. Inability of the People of West Virginia to Regain Control of their Government and its Processes 14

E. The Constitutional and Procedural Defects Responsible for this Unrestrained Political oppression 15

F. Conclusion 16

INDEX TO APPENDICES

App. 1. Decision of State Supreme Court—Repetition for Appeal 5a

App. 2. Decision of State Supreme Court—Original Petition for Appeal 6a

App. 3. Judgment Order Trial Court 7a

App. 4. Rule 7 State Supreme Court 9a

App. 5. Joint Bank Account Statute and Case Law 12a

App. 6. State Statute—Committment 14a

App. 7. Petition for Mandamus/Prohibition 16a

App. 8. Addendum to Mandamus/Prohibition 22a

App. 9. Ruling on Mandamus/Prohibition 23a

Page

App. 10. Repetition—Amended Issue 24a

App. 11. Trial Transcript 25a

App. 12. Committment Transcripts 29a

App. 13. Appellant's Ohio Counsel Apposing Extradition 32a

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AN APPEAL FROM THE STATE SUPREME COURT
OF WEST VIRGINIA

JURISDICTIONAL STATEMENT

INTRODUCTION:

I. State Supreme Court Rule 7 which permits the refusal of appeal without a statement of reason or written opinion, when the appeal is of right violates the "Due Process of Law" provision of the 14th Amendment of the Federal Constitution. The said rule encourages arbitrariness.

II. State Constitutional provisions Article VIII Secs. 2 and 10 which provide for the election of State Judges for a term, inherently subjects those judges to the influence of the polity and renders them ineffective in restraining: the other two branches of government and political oppression. The three branches are combined in their interests and motivation on issues

of a political nature. A violation of the United States Constitution guarantying a republican form of government.

III. The separation, in fact, of the three branches, the design of the Federal Constitution; Article II, Sec. 2 providing for the appointment of judges with a life tenure. These Constitutional issues were presented to the State Supreme Court and that court refused the petition for appeal without a statement of reason or written opinion. A pro tanto denial of the right of appeal.

The provision in the State Constitution provides for the election of judges rendering them ipso facto subject to the polity. The evidence presented demonstrates that unequivocally. Most of the evidence can be documented. State Supreme Court Rule 7 is being used to avoid confrontation wtih the polity. That Court fails to restrain political abuse and fails in its constitutional duty to restrain the legislative and executive branches.

IV. There is inherent in these constitutional defects, a strong uncontrollable natural inclination to arbitrariness in the constitutional functions of the judiciary.

OPINIONS BELOW

The decision of the West Virginia Supreme Court denying a petition for appeal entered on January 30, 1985, motion for leave to file a re-petition overruled on March 27, 1985, and the judgment of the Circuit Court of Kanawha County, West Virginia are set out in the Appendix hereto.

JURISDICTIONAL STATEMENT

This action involving the rights of a payee of a joint bank account to withdraw funds from such account are set forth in State Statute Chapter 33A, Article 4, Section 33, (App.6) and the related State Supreme Court Decision provide that there is a presumption of joint ownership in the monies so deposited. The Trial Court said it didn't agree with the law and overruled the Supreme Court's unanimous decision in *Dorsey v. Short,* 205 S.E.2d 687 (1974) (App.6-1) and refused to instruct the jury according to the established law. The lower court's handling of the case before and during trial evidenced a strong prejudice toward the appellant by repeatedly refusing her procedural and substantive "due process" of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States. On appeal to the Supreme Court of West Virginia, that Court decided not to allow the appeal in spite of the Trial Court's action. In so doing failed to provide the appellant a written opinion—State Supreme Court Rule 7 (App.5)

In West Virginia there is no Intermediate Appellate State Court. Whereas, the Supreme Court Rule 7 provides for the procedure of denying an appeal absent a written opinion. This in spite of the fact the State Constitution, Article VIII, Section 5, provides for an appeal of right, *Alaska Packers v. Pillsbury,* 57 S.Ct. 682, 301 U.S. 174, 81 Led. 988, by the establishment of that Court. Therefore, the procedure permits an appeal to be denied without a written opinion, *Pound's Appellate Procedure In Civil Cases,* p.4, or statement of reason for denying and so violates said "due process" clause.

The State Supreme Court refused to grant the petition and re-petition of the appellant (App.1, 2). The

re-petition raised this constitutional issue and others.

The Constitution of West Virginia, Article VIII, Sections 2 & 10, provides that all State Court judges be elected for a term. This provision forces State judges to be cognizant of factors, including the polity, which might adversely affect their tenure as judges. Therefore, this State constitutional provision violates the design and scheme of the United States Constitution which provides for appointment of judges with a life tenure, freeing them from outside influence and separates the judiciary from the influence of the polity, *U.S. v. Lee,* 106 U.S. 196, 223-1 S.Ct. 240; *Black's American Constitutional Law* 2d Ed., pp. 74-76.

Further, the said State constitutional provision in practice, if not in theory, is violative of the mandated separation of the three Branches of our government, *Black's American Constitutional Law* (supra) p. 76. It allows the polity to gain a measure of control over the judiciary and weakens the restraints that it must impose on the other two Branches.

A motion for leave to file a re-petition was filed on March 12, 1985, further arguing the aforesaid constitutional issues. The Clerk accepted the motion and re-petition and the Court again refused the motion, (App.1) without a written opinion or explanation for its refusal.

JURISDICTION

The jurisdiction of the United States Supreme Court to review this decision of the West Virginia Supreme Court on appeal is conferred by 28 U.S.C. Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review: *Stanton v. Stanton,* 421 U.S. 7 (1975); *Duren v. Missouri,* 99 S.Ct. 664 (1979); *Orr v. Orr,* 99 S.Ct. 1102 (1979).

QUESTIONS PRESENTED

Does the State Supreme (Court Rule 7,) (App. 5) violate "Due Process of Law" by refusing a petition of appeal without a statement of reason or written opinion?

Does that rule have a propensity for permitting political influence to invade the province of the judiciary; and does it interfere with required restraints on the Executive and Legislative branches; and does it permit or promote political oppression?

Does the Constitutional provisions for election of judges for a term serve to defeat the separation of the three branches, by subjecting judges to political pressures and influence thereby violate due process of law?

Did the State Supreme Court's refusal to allow the petitions for appeal emanate from either or both of the latter and was its decision to do so used to avoid arbitrariness by yielding to political influence.

Constitutional and Statutory Provisions

Article III, Section 1, provides that judicial power of the United States shall be vested in One Supreme Court, etc.

Article II, Section 2, provides the President "shall have power" . . . "to appoint" judges (with a life tenure).

Article III: The United States shall guarantee to every State in this Union a republican form of government.

The Fourteenth Amendment provides "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United

States, nor shall any State deprive any person of life, liberty or property without due process of law."

The design of the Federal Constitution provides for three separate Branches, so that each Branch is vested with separate powers and each may function separately and not be subjected to the influence of the other, and so that each may act in restraint of the other. The design is essential to a republican form of government.

The Constitution of West Virginia at Article V, Section 1, Division of Powers, provides "the Legislative, Executive and Judicial shall be separate and distinct."

State Constitution Article VIII, Sections 2 and 10, Judicial Department, provides that judges shall be elected for a term of years.

State Constitution Article VIII, Section 4, provides that "no decision rendered by the Supreme Court of Appeals as binding authority upon any of the inferior courts . . . unless such decision is concurred in by at least three judges of said court." (n. The cited State Supreme Court case *Dorsey v. Short* (App. 6.1) was decided by more than three judges.)

State Constitution Article VIII, Section 5, provides that every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in the record. (n. No provision is made for allowing a denial of an appeal without a written opinion.)

STATEMENT OF CASE

The Appendix will demonstrate the prejudice of the lower court in the administration of the law in his

decisions on the law. The judge was newly appointed and was seeking election, his first election. The attorney representing the appellees held the highest attorney's position in the State. Because of his apparent political influence, the judge yielded to his influence, realizing that only a few votes could cause him to lose the election. The judge was, by virtue of Article VIII, Section 10, of the State Constitution, forced to decide between his tenure and his allegiance to the law. This when reliable research has demonstrated that far fewer than 1% of the population will sacrifice tenure or job security when forced to make such a decision. It is axiomatic that this system of selecting judges will not produce such a select portion of the population to serve as judges. The judge denied the appellant procedural "due process" in forcing the appellant to trial before the completion of discovery, incorrectly, and contrary to the law and in violation of State Constitution Article VIII, Section 4, instructed the jury contrary to the law (App. 1.2) and so forced a judgment against the appellant in direct violation of Article VIII, Section 4 of the State Constitution.

In this regard, State Statute Chapter 31A, Article 4, Section 33 (1969), provides that: "When a (joint) deposit is made by any person . . . upon the making thereof shall become the joint property of such persons as joint tenants . . . " (App. 6)

The State Supreme Court decision on this statute decided, without dissent, *Dorsey v. Short* (supra) at Syl. 3: (App. 6.1) "prior to death of a donor depositor a rebuttable presumption exists" . . . "of joint tenancy."

The lower court refused to so instruct the jury. That court further instructed the jury on matters of which

there was no testimony in the trial on the rights of appellant in making such a withdrawal, i.e., incompetency, convenience, fiduciary accounts and fraud (App.12), over the objections of the appellant.

The appellant further submitted evidence to the State Supreme Court in the form of transcribed hearings and affidavits that the attorney for the appellee caused an administrative law judge to violate his own statutory authority by committing Grace Catherine Wolfe to a State mental hospital for the sole purpose of keeping her in the State of West Virginia (App.13). State Statute Chapter 27, Article 5, Section 4(j)(2) (App.8) provides that commitment to a State mental hospital shall be made only in absence of proof of "a less restrictive alternative." This commitment was made in spite of the known fact that a psychiatrist decided to release her to the home care of the appellant. Moreover the administrative judge had already decided on the record that Mrs. Wolfe be released to the appellant's home care in Ohio. The decision reversal, also on the record (p. 14 of App.8), was caused by the appellee's attorney's delayed entrance (p. 12 of App.8) into the hearing without his client and by subjecting the judge to his political influence. As a result, Mrs. Wolfe was wrongfully committed and then detained in the institution under the false pretense that the law required commitment for three days. There is no such requirement in the law. Before the three days expired, the appellee returned to the State and Mrs. Wolfe was released immediately to her care. Yet, the appellant was refused custody only a few hours before. The appellee, through her attorney, used the same political influence to orchestrate her release, from the State mental institution, to the appellee's custody.

Further, the appellee, through her attorney, had issued a warrant for the arrest of the appellant for obtaining money under false pretenses. The only evidence to support the charge was the statement of a witness that Mrs. Wolfe appeared at the bank by herself and expressed shock at the partial withdrawal. Mrs. Wolfe was not even willing to go to a nearby grocery store in the company of friends. Why would she travel a distance of three miles by herself on public transportation? This testimony becomes even more unbelievable when the appellee had, as a guardian de son tort, transferred the funds to a trust fund in her name just thirty days before. Mrs. Wolfe had no occasion to go to the bank, could not and did not go to the bank. Instead, it was the appellee who went to the bank on that day and she then first learned of the withdrawal. It was the appellee who had control of the accounts and Mrs. Wolfe had delegated that authority to the appellee by a power of attorney for the purpose of turning over the accounts, for her handling thereby avoiding the need for going to the bank.

A warrant was issued for the appellant's extradition to West Virginia in April 1984. After the State of Ohio received statements and evidence, it has to this date refused to respond to the request for extradition (App.14). A delay that bespeaks of the gross improprieties of the groundless charge as seen by the State of Ohio and as seen by the appellant's Ohio counsel. The appellant is afraid to return to the State of West Virginia to have the charge dismissed. Her Ohio counsel shares that fear.

The appellant presented the Trial Court with a motion to dismiss on the grounds that the appellee failed to bring the action in the name of a real party in interest, citing a violation of Rule 25 R.C.P. and that

Rule 17 R.C.P. did not permit a substitution when the original action did not have a real party in interest. The Trial Court refused appellant's motion. The appellant petitioned the State Supreme Court for a writ of mandamus and prohibition (App.9). The latter to prohibit the Trial Court judge from requiring the appellant to submit to the deposition until the jurisdictional matter was properly decided under mandamus. This further evidences the trial judge's favoring the appellee's politically influential attorney. Moreover, the trial judge's secretary assured me that the case would not be reached as set on the docket because there were thirteen cases ahead of it. Yet, this attorney was able to influence the judge to advance it over other cases and out of its proper order and I was notified less than twelve hours before the trial date, with my client 200 miles away. The judge was fully prepared to enter a default judgment. Even though the case was properly before the State Supreme Court. Again, the Supreme Court refused the petition without reason or opinion (App.10).

The appellate decision was handed down on January 5, 1985 and the trial which was again improperly scheduled for the next month preceeded without adequate preparation and while needed discovery was incomplete. The trial judge refused to even accelerate the time for responding to discovery. Consequently, appellant was forced to trial without even knowing who the appellee's witnesses would be. During the course of the premature trial, the judge refused to enforce a valid and duly served subpoena that would have produced witnesses to the illegal commitment and detention of Grace Catherine Wolfe in a State mental institution to accomplish a change in custody and to retain control of the estate of the incompetent.

It was the evidence of the use of political influence of the appellee's attorney or other State officials, relevant impeachment evidence that the judge felt compelled to suppress (App.12 at 36). The judge didn't want to jeopardize his election by exposing other State officials.

There have been other cases where political influence was brought to bear on our judiciary, causing results that had no explanation in the law. That proves the Judicial Branch of State Government is operating under the influence of the polity.

A mother was separated from her children permanently by an adoption that was granted without notice or hearing. Five judges of the State Supreme Court refused a writ of habeas corpus and, instead, returned the writ to the Trial Court to avoid a political confrontation, the first time this procedure had been used in the known history of this Court. The lower court judge's first comment was "why me?" Why was he being forced into a politically oriented case? The writ was refused by the lower court for reasons which had no merit in the law. A second writ was filed to the Supreme Court and that court a second time refused to grant the writ. In the interim, it was necessary to mandamus the lower court to make its decision on the writ of habeas corpus. The lower court judge had delayed this extraordinary remedy in excess of six months, evidencing his reluctance to overrule the judge who had granted the illegal adoption. That latter judge is known to have considerable political influence. The mother, exhausted of funds and spirit, returned to her home in Kentucky. A young Legal Aid attorney who had reviewed the case described the result as "incredible!"

I represented a criminal defendant who had been charged with a misdemeanor. When I refused to enter a plea, the case was removed from the Magistrate Court and the prosecuting attorney, by means of gross violation of his responsibilities to the grand jury, caused the defendant to be indicted on a felony charge, to the point that two of the grand jurors objected to his bias and unfair treatment of witnesses. The investigating officer related that in his opinion no crime had been committed. He was not even called to testify. The prosecuting attorney refused to dismiss the charge and pressured for trial after almost a one-year delay. The indictment was attacked by a writ of prohibition and again the State Supreme Court on a vote of 4 to 1 refused the petition without a statement of reason or opinion. The case was then promptly scheduled for trial. After having failed to have the charge dismissed and realizing the client could not pay my fee, court-appointed counsel was suggested. The court-appointed attorney made his appearance on the record and the case was promptly and summarily dismissed. Again evidencing the Judicial Branch failure to apply the law in the presence of political influence; again evidencing indisputable evidence of the lack of restraint, an inability of the Judicial Branch to perform its constitutional responsibilities.

I was dismissed from my position as attorney for the State Fire Marshal's office for refusing to carry out a known illegal order. I was defending the law and my God-given rights of honor and integrity. The State Supreme Court again refused my petition without statement of reason or written opinon. My attorney was outraged by this procedure of that court. The State Supreme Court refused to confront the very powerful politician who ordered my dismissal. It

avoided confrontation by refusing the petition, knowing that it could do so without the constitutional obligation of justifying its decision, State Constitution Article VIII, Section 5. It was not learned until later that the State Fire Marshal's misuse of his statutory authority was being used to *defeat* the adoption of a municipal fire safety code and I was to be a party to the unlawful procedure. The influential members of the municipality were housing students in conditions that represented a clear and present danger to their lives. Once again evidencing gross abuse of governmental administration of the law by political influence an abuse unrestrained by the law.

A lower court judge delayed ordering an attorney/State legislator to answer interrogatories for two years.

A civil case that was on the trial docket for three years was scheduled and rescheduled for trial and continued each time by the court. The final scheduled trial date was to be likewise continued to the next term according to the docket clerk because of other cases scheduled ahead of it. The defense attorney who was active in politics and a local city attorney asked me on a Friday if I wanted the case tried. He said he could get it scheduled for trial on Monday and he did. A complaint was registered with the Administrator of the State Supreme Court because of these obvious tamperings with the Trial Court's docket. The State judges feel compelled to yield to the desires of the polity in order to ensure their tenure in office.

The State Fire Marshal's office applied institutional fire safety standards to an applicant for a residential-type child day care facility. A decision that was clearly knowingly in violation of his own regulations. The attorney representing the applicant yielded to

this illegal order for two reasons: (1) he knew that it was an overt political act against his client and that he could not overturn the decision through the judiciary because it was politically motivated; (2) he knew that if he did contest the decision in a court of law he would jeopardize his practice in other cases.

The foregoing is not an exhaustive review of the role the polity plays in the Judicial Branch, but the cases cited are representative and most can be documented.

The people of West Virginia are for the most part aware of the unrestrained political influence in their government, but they are powerless to deal with it effectively. Moreover, they are in fear of it.

The media appears to be ineffective in their very important role. The reason for this is not known. However, there is a strong desire not to publicize when it would reflect badly on the image of West Virginia. The subject of the image of West Virginia is almost a taboo. It is seldom that West Virginians will engage in any topic that reflects on the State and are defensive on the subject. The desire seems to be to conceal it and in so doing encourages the wrongdoers. It may be the press reflects this attitude and may also suppress it out of a desire not to offend their subscribers.

Other states elect their state judges and have the same problems of maintaining the integrity of their Judicial Branch as well as the other Branches. However, West Virginia's situation is compounded by the State Supreme Court, the only appellant court, procedure of refusing to allow a petition without a written opinion. This opens the door even wider to political oppression. It gives them a way of avoiding their responsibility to restrain not only in the matters of

law and justice but to restrain acts of the Executive and Legislative Branches. This constitutional defect goes to the very heart of a democratic form of government.

It is axiomatic that man will take as much power as he is given. Our constitution is designed and was enacted to restrain that power. Here that restraint is impaired and the most fundamental of human rights are being lost.

The Supreme Court procedure and the constitutional provision requiring the election of State judges are inherently defective. In practice they force a judge to make a choice between the security of his office and his integrity to the law. No man should, by operation of the law, be required to make such a decision. These laws are defective, they fail to take into account or make allowance for basic human frailities. They fail to restrain the natural desires of man for power.

The three Branches of government in WV although separated in theory, are combined in fact by a common interest and common influence. That of the polity and they are not, in fact, functioning in a constitutional manner. There is an absence of restraint and the deterioration of justice that results in a political tyranny by those who are so disposed. *Black's American Constitutional Law* (supra) p. 76 cites *Montesquieu Espirit Des Lois,* liv.11, c. 6, in part as follows:

> "All would be lost if the same man or the same body of chiefs, or of nobles or of the people, exercised these three powers, that of making the laws, that of executing the public resolutions and that of judging the crimes or controversies of individual . . . .

> "Neither is there liberty if the judicial power is not separated in fact from the legislative and executive powers."

There is no separation in fact, only in theory, and there is a limited form of tyranny as evidenced in the foregoing.

Direct and on point precedents have not been found on this latter issue and so none are cited.

CONCLUSION

It is submitted that this is not a political issue, but is an issue that must be addressed, hopefully, within the purview of this Court.

It is a well-known fact that lawyers will not engage or confront the establishment upon which they depend for their own tenure and security. Yet, they alone are best informed and best able to deal effectively with the issue. But they remain silent and submissive for their own and their families' self-preservation.

The plea is for this Court, which is properly designed and constituted to allow this appeal or writ of certiorari, to render its opinion on the issues as presented. To restore the integrity of the law and bring the Judicial, Executive and Legislative Branches of Government of West Virginia within conformity with the Constitution of the United States and require the State Supreme Court on the appellate procedure to conform to the "due process' clause of the Fourteenth Amendment of the Federal Constitution.

LELAND T. SLOAN
Counsel for Appellant
209 Fifth Avenue
St. Albans, West Virginia 25177

Substantiality of the Questions Presented:

The questions presented involve: the right to justice and freedom from political oppression. These rights pre-date the Constitution and are fundamental to a free society. They are being abrogated as a direct and proximate result of the Supreme Court justice's dependancy of political support in seeking re-election. The process used is passive support by avoiding confrontation. The means is the procedure of refusing to accept appeals when the appellee's are of political influences and when it is apparent that influence is active in the case. A decision by this court in this case will have a considerable impact on the restraint of political abuse in West Virginia; and restore the judiciary to its Constitutional function of restraining the polity, the government and governmental processes.

APPENDIX

TABLE OF AUTHORITIES
Cases

	Page
Alaska Packers v. Pillsbury, 57 S.Ct. 682, 301 U.S. 174, 81 L ed 988	3
Dorsey v. Short, 205 S E 2d 687 (1974)	3, 6, 7
Duren v. Missouri, 99 S. Ct. 664 (1979)	4
Orr v. Orr, 99 S. Ct. 1102 (1979)	4
Stanton v. Stanton, 421 U.S. 7 (1975)	4
U.S. v. Lee, 106 U.S. 196, 231-1 S. Ct. 240	4

CONSTITUTIONAL and STATUTORY PROVISIONS
Constitution and Statutes

United States Constitution, Article II, Sec. 2	2, 5
United States Constitution, Article III	5
United States Constitution, Article III, Sec. 1	5
United States Constitution, Amendment 14	5
West Virginia Constitution, Article V, Sec. 1	6
West Virginia Constitution, Article VIII, Sec. 2	1, 4, 6
West Virginia Constitution, Article VIII, Sec. 4	6, 7
West Virginia Constitution, Article VIII, Sec. 5	3, 6, 13
West Virginia Constitution, Article VIII, Sec. 10	1, 4, 6, 7

TABLE OF AUTHORITIES
West Virginia Statutes

	Page
Chapter 31A, Article 4, Sec. 33	7
Chapter 27, Article 5, Sec. 4 (j) (2)	8
Chapter 33A, Article 4, Sec. 33	3

West Virginia Rules of Civil Procedure, Rule 25 . 9
West Virginia Rules of Civil Procedure, Rule 17 . 10
West Virginia State Supreme Court, Rule 7 ..... 1, 2, 3, 5

Textbooks

Black's American Constitutional Law 2nd ed
p.p. 74-76 ..... 4, 15
Montesquieu, Espirit Des Lois, 1 iv., 11, c. 6 15
Pounds Appellate Procedure in Civil Cases p 4 .. 3

IN THE SUPREME COURT OF THE
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MARGARET "PEGGY" HEDGES,
Appellant,
v.
SYLVIA O. ALLINDER as COMMITTEE
for GRACE CATHERINE WOLFE,
Appellee.

NOTICE OF APPEAL TO THE
SUPREME COURT OF
THE UNITED STATES

Notice is hereby given that MARGARET "PEGGY" HEDGES, the appellant above named, hereby appeals to the Supreme Court of the United States from the Supreme Court of the State of West Virginia refusing to accept the Petition of Appeal and refusing a Motion to file a Re-petition in this action on the 30th day of January, 1985 and the 21st day of March, 1985, respectively.

The appeal is taken pursuant to 28 U.S.C., Sec. 1257(2)

Leland T. Sloan
Attorney for Margaret "Peggy" Hedges,
Appellant
209 Fifth Avenue
St. Albans, West Virginia 25177

Proof of Mailing — Affidavit

I, Leland T. Sloan, attorney for MARGARET "PEGGY" HEDGES, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 29th day of April, 1985, I deposited in a United States Post Office located in

Charleston, Kanawha County, West Virginia, with first-class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States, within the time allowed for filing, the foregoing Jurisdictional Statement.

Leland T. Sloan

Subscribed and sworn to before me at St. Albans, Kanawha County, West Virginia, this 29th day of April, 1985.

My Commission expires September 1, 1986.

Dorothy A. Sloan
NOTARY PUBLIC

APPENDIX 1

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 21st day of March, 1985, the following order was made and entered, to-wit:

Sylvia O. Allinder, etc.

vs.

Margaret "Peggy" Hedges

On a former day, to-wit, March 12, 1985, came the petitioner, Margaret "Peggy" Hedges, by Leland T. Sloan, her attorney, and presented to the Court motion in writing to file a re-petition for an appeal in the captioned action for the reasons stated therein, which motion is refused.

A True Copy

Attest:
GEORGE W. SINGLETON
Clerk Supreme Court of Appeals

APPENDIX 2

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 30th day of January, 1985, the following order was made and entered, to-wit:

Sylvia O. Allinder, etc.

vs.

Margaret "Peggy" Hedges

On a former day, to-wit, September 24, 1984, came the petitioner, Margaret "Peggy" Hedges by Leland T. Sloan, her attorney, and presented to the Court her petition praying for an appeal from and supersedeas to a judgment of the Circuit Court of Kanawha County rendered on the 3rd day of February, 1984, with the record therein accompanying the petition, which being seen and inspected the appeal and supersedeas prayed for is refused by a majority of the Court. Justice McGraw would grant.

A True Copy

Attest:

_____

Clerk Supreme Court of Appeals

APPENDIX 3

STATE OF WEST VIRGINIA

At a Circuit Court of Kanawha County held at the Court House thereof on the 3rd day of February, 1984

SYLVIA O. ALLINDER, as Committee
for GRACE CATHERINE WOLFE,
Plaintiff,

vs.

Civil Action No. 83-C-206

MARGARET "PEGGY" HEDGES,
Defendant.

ORDER

On the 24th day of January, 1984, the plaintiff, Sylvia O. Allinder, as Committee for Grace Catherine Wolfe, in person and by counsel, and the defendant, Margaret "Peggy" Hedges, in person and by counsel, appeared before the Honorable Herman G. Canady, Judge of the Circuit Court of Kanawha County, West Virginia, and issue having been joined, this action came on for trial by jury.

Thereafter, following the conclusion of the evidence, the giving of instructions by the Court, and the arguments of counsel, the jury proceeded to deliberate, and did on the 30th day of January, 1984, return their verdict as follows:

> "We the jury find for the plaintiff, Sylvia O. Allinder, as Committee for Grace Wolfe, against the defendant Margaret Hedges, and assess her compensatory damages in the amount of $40,000, plus interest, and her punitive damages in the amount of $55,000.
>
> Dated January 30, 1984.
> Donald L. Toler, Foreman"

It is, therefore, ORDERED that the plaintiff, Sylvia

O. Allinder, as Committee for Grace Catherine Wolfe, recover judgment against the defendant, Margaret "Peggy" Hedges, for compensatory damages in the sum of FORTY THOUSAND DOLLARS ($40,000.00), plus legal interest thereon until paid and their costs;

It is further ORDERED that the plaintiff, Sylvia O. Allinder, as Committee for Grace Catherine Wolfe, recover judgment against the defendant, Margaret "Peggy" Hedges, for punitive damages in the sum of FIFTY-FIVE THOUSAND DOLLARS ($55,000.00); to all of which the defendant, Margaret "Peggy" Hedges, by counsel, objects and excepts.

Enter:
HERMAN G. CANADY
JUDGE OF THE CIRCUIT COURT

Date: February 3, 1984

Presented by:
HENRY C. BIAS, JR.
Counsel for Plaintiff

Inspected by:
LELAND T. SLOAN
Counsel for Defendant

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS,

I, Phyllis J. Rutledge, Clerk of the Circuit Court of said County and in said State, do hereby certify that the foregoing is a true copy from the records of said Court.

Given under my hand and seal of said Court, 3rd day of February, 1984.

PHYLLIS J. RUTLEDGE,
Clerk Circuit Court of
Kanawha County, West Virginia

APPENDIX 4

Rule 7. Rejection or Allowance of Appeal. (a) *Rejection.* If the petition for appeal is rejected by the Supreme Court on the ground that the judgment or order is plainly right, no other petition for appeal from that judgment or order shall be permitted. If the petition for appeal is rejected on any other ground, or if no ground be cited in the rejection, the petitioner may renew the petition as many times as he desires during the period prescribed by law for presentation of petitions.

(b) *Renewal of Petition.* A petitioner desiring to renew a petition may notify the Clerk of the Supreme Court of his intention in writing within thirty days after the entry of the order denying his application. In such case, the Clerk shall retain the petition and record in the Supreme Court, the petition may be reheard in accordance with Rule 5, and an amended petition or supplemental argument may be filed.

If the Clerk of the Supreme Court receives no timely notice of the petitioner's intention to renew, he shall return the record to the circuit court clerk, who shall repay the petitioner any money deposited under Rule 4(d) or Rule 4A(e), in excess of fees and expenses.

(c) *Allowance.* If the petition for appeal is granted:

(1) The Clerk of the Supreme Court shall docket the same and immediately send a copy of the order granting the appeal to the petitioner's counsel, or, if there is no counsel of record, to the petitioner, and to the clerk of the circuit court, who shall retain the same in his records.

(2) The Clerk of the Supreme Court shall forthwith return the record to the clerk of the circuit court

for preparation of the record of the case for appeal in accordance with Rules 8 and 9.

INDEX

Page

STATE STATUTES—
JOINT BANK ACCOUNTS.....12a
ANNOTATION.....12a

APPENDIX 5

§31A-4-33. Deposits in trust; deposits in more than one name.

When a deposit is made by any person in the name of such depositor and another or others and in form to be paid to any one of such depositors, or the survivor or survivors of them, such deposit, and any additions thereto, made by any of such persons, upon the making thereof, shall become the property of such persons as joint tenants; and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to any one of them during the lifetime of them, or to the survivor or survivors after the death of any of them; (1919, c. 60; Code 1923, c. 54, § 79a (7); 1929, c. 23, § 24; 1969, c. 7.)

Presumptions.—Prior to the death of a donor-depositor, a rebuttable presumption exists under the provisions of this section that the ownership of the funds is joint, a presumption which may be overcome by conpetent evidence. Dorsey v. Short, 157 W. Va. 866, 205 S.E.2d 687 (1974).

Dorsey v. Short, 157 W. Va. 866, 205 S.E.2d 687 (1974); WIlkes v. Summerfield, 212 S.E.2d 316 (W. Va. 1975); Farrar v. Young, W. Va., 230 S.E.2d 261 (1976).

INDEX

Page

State Statute Chapter 27 — Article 5 Section 4
Subsection (j) (2) 14a

APPENDIX 6

(j) *Requisite findings by the court.*

(2) The circuit court or mental hygiene commissioner shall also make a finding as to whether or not there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment shall be on the person or persons seeking the commitment of the individual.

INDEX

Page

PETITION FOR MANDAMUS—

Style of Original Complaint.....16a §1

Incompetency of Named Plaintiff.....16a §2

Jurisdictional Issue.....17a

Prohibition Writ.....20a

R.C.P.....19a

APPENDIX 7

IN THE SUPREME COURT
OF APPEALS OF WEST VIRGINIA

MARGARET "PEGGY" HEDGES

Petitioner,

vs. CIVIL ACTION NO.

HERMAN J. CANADY, Judge of the
Circuit Court of Kanawha County
PHYLLIS J. COLE, Clerk of the
Circuit Court of Kanawha County;
and HENRY C. BIAS, JR., Attorney,

Respondents.

Petition for Writs of
Mandamus and Prohibition

1. The Petitioner, a sister of Grace Catherine Wolfe, is the defendant in an action in the Circuit Court of Kanawha County, West Virginia, entitled Grace Catherine Wolfe, individually, and Grace Catherine Wolfe by the holder of her Power of Attorney, Sylvia O. Allinder vs. Margaret "Peggy" Hedges.

2. On January 17, 1983 the complaint was filed by Respondent Henry C. Bias, Jr. as attorney of record and named Grace Catherine Wolfe, an incompetent, as plaintiff, and also named Sylvia O. Allinder (half sister to Grace Catherine Wolfe) as additional plaintiff in her capacity as attorney in fact under a power of attorney executed by the said Grace Catherine Wolfe on October 27, 1982.

3. Just 46 days later, on March 7, 1983, Petitioner Margaret "Peggy" Hedges testified under oath that she found Grace Catherine Wolfe, who was age 80, in

her home in a "deplorable condition;" that Grace Catherine Wolfe did not recognize her at first and just "stared into space" and appeared to have been in this state for weeks. Copies of parts of that deposition are attached and made a part hereof and marked as Petitioner's Exhibit #1.

4. On March 7, 1983 Grace Catherine Wolfe was ordered committed by the Kanawha County Mental Hygiene Commissioner to an institution as a result of the aforesaid mental incompetency.

5. The record by virtue of the aforesaid complaint, a copy of which is attached and made a part hereof and marked as Petitioner's Exhibit #2, demonstrates that Sylvia O. Allinder was named as an additional plaintiff for the obvious reason that her principal was then at that time mentally incompetent. Therefore, Sylvia O. Allinder by virtue of her power of attorney was not a real party at interest and not a proper party.

6. On April 19, 1983 Petitioner filed a motion to dismiss, stating that plaintiff Sylvia O. Allinder was not a real party at interest and Grace Catherine Wolfe was mentally incompetent.

7. On September 13, 1983, after proper notice and hearing, the Respondent Herman J. Canady, Judge, entered an order, a copy of which is attached hereto and marked as Petitioner's Exhibit #3, denying Petitioner's motion and upon the oral motion of Respondent Henry C. Bias, Jr., Attorney, ordered the said Sylvia O. Allinder, who had then been appointed committee, be substituted as a party plaintiff for Grace Catherine Wolfe.

8. Petitioner on October 28, 1983 filed a motion for relief from the September 13, 1983 order with a supporting memorandum of law.

9. On December 3, 1983 Respondent Henry C. Bias, Jr., Attorney, prematurely served on Petitioner's attorney notice to take the deposition of Margaret "Peggy" Hedges while the Petitioner's motion to dismiss was not finalized by virtue of the motion of October 28, 1983, a motion which raises jurisdictional issues which must be finalized before a case can properly proceed into discovery and trial.

10. On November 29, 1983 the Respondent, Henry C. Bias, Jr., Attorney, while said Petitioner's motion of October 23, 1983 was still pending, attempted to force the Petitioner into a premature trial by retaining the case on the Court's docket in advance of the completion of discovery and he did so with full knowledge that Petitioner's counsel was not prepared for trial and with the full knowledge that the Petitioner's motion was set for hearing on December 6, 1983 under Rule 59 R.C.P. and with the full knowledge that Petitioner's motion challenged the jurisdiction of the Court and that Petitioner intended to proceed by writ of prohibition to this Court unless the opinion of Respondent Herman J. Canady, Judge, demonstrated the Court had jurisdiction to proceed.

11. Under these circumstances, Respondent Herman J. Canady, Judge, retained the panel of jurors and proceeded on November 29, 1983 as though the case was ready for trial and would be tried over the objections of Petitioner's attorney that the jurisdictional issue was not resolved and, therefore, a trial would be a nullity.

12. The Petitioner was only able to stop the trial or entry of default judgment under the above circumstances by use of a technicality, i.e., the Respondent Henry C. Bias, Jr., Attorney, had failed to certify

his readiness for trial under Rule 3 T.C.R. Otherwise, the said Respondents would have caused the case to proceed under the impediment of a valid jurisdictional issue to the great disadvantage of the Petitioner and her attorney.

13. The hearing set for December 6, 1983 on Petitioner's said motion for relief was continued until December 22, 1983 in order to combine for hearing the Petitioner's additional motions (1) to vacate a second trial date set for January 23, 1984 by Henry C. Bias, Jr., Attorney, and (2) for a protective order against the taking of the Petitioner's deposition.

14. On December 22, 1983 the Respondent, Herman J. Canady, Judge, declined to rule on the Petitioner's motion for relief under Rule 60 R.C.P. and let stand the taking of Petitioner's deposition and the trial date of January 23, 1984 certified by Respondent Henry C. Bias, Jr., Attorney.

15. Said Respondent Attorney improperly certified the case ready for trial on December 3, 1983 when he knew there was a motion before the Court which challenged the jurisdiction of the Court and when he had been informed by the Petitioner's counsel that the Court's decision was not interlocutory but final and subject to appeal and an appeal would be considered if the Court's decision was unfavorable to the Petitioner.

16. That Petitioner filed her motion for relief under Rule 60 R.C.P. for the reason that the Court's decision was based upon an incorrect legal practice, Petitioner filed a memorandum of law covering the jurisdictional issue and other authority supporting a dismissal.

* * *

* * *

19. Said Respondent Judge will proceed to try the action now pending before him unless restrained or prohibited by writ of prohibition issued by this Court and unless he is commanded by writ of mandamus to dismiss the case by reason of a lack of jurisdiction, there being no other adequate remedy.

20. Said Respondent Attorney will proceed with discovery prematurely and maintain the case on the Court's trial docket by certifying the case is ready in an exparte manner, contrary to the intent of Rule 3 T.C.R. unless restrained by a writ of prohibition issued by this Court, there being no other adequate remedy.

21. Said Respondent Clerk will permit the case to remain on the Court's trial docket while the issue of the Court's jurisdiction has not been finalized and while discovery has not been completed.

INDEX

Page

Addendum to Prohibition—
Prohibit Discovery..... 22a

APPENDIX 8

Addendum to Petition for Writs of Mandamus and Prohibition

1. The Respondents Attorney and Judge have attempted to deprive the Petitioner of her right to apply to this Court for review and have unmistakenly attempted to render portions of this writ as moot by the accelerated performance of those acts and rulings which the Petitioner seeks to have prohibited or at the least stayed until this Court is able to process the Petitioner's application for a stay and the subsequent preliminary review of the merits of the petition.

2. The Petitioner made a request for a stay under Chapter 53, Article 1, Section 9, of the Code on December 29, 1983 and delivered a partially completed petition on December 30, 1983 to assist the Court's decision on a stay order. The stay order was needed to avoid the consequences of the Respondent Judge's order of January 3, 1984 and to prevent the action of the said Respondents from being mooted.

3. A copy of the Respondents' motion to compel and the Court order entered on January 3, 1984 are attached hereto and marked as Petitioner's Exhibits 6 and 7.

Dated: January 9, 1984

LELAND T. SLOAN
501 Sixth Avenue
St. Albans, West Virginia 25177

Counsel for Petitioner

APPENDIX 9

STATE OF WEST VIRGINIA
IN THE SUPREME COURT OF APPEALS
IN VACATION

Margaret "Peggy" Hedges

vs. Mandamus/Prohibition

Herman J. Canady, Judge, etc., et al.

On a former day, to-wit, December 30, 1983, came the petitioner, Margaret "Peggy" Hedges, by Leland T. Sloan, her attorney, and presented to the Undersigned Justice of the Court her petition and exhibits, praying for a writ of prohibition and mandamus to be directed against Herman J. Canady, Judge of the Circuit Court of Kanawha County; Phyllis J. Cole, Clerk of the Circuit Court of Kanawha County; and Henry C. Bias, Jr., Attorney, as therein set forth. Upon consideration whereof, the undersigned Justice is of opinion that a rule should not be awarded, and the prayer of the petition is therefore denied.

DONE IN VACATION of the Supreme Court of Appeals, this 5th day of January, 1984.

THOMAS E. McHUGH
Chief Justice Supreme Court of Appeals

Received the foregoing order this 5th day of January, 1984, at ten o'clock a.m., and entered the same in Order Book 87, at Page 465.

GEORGE W. SINGLETON
Clerk Supreme Court of Appeals

A True Copy

Attest:
GEORGE W. SINGLETON
Clerk Supreme Court of Appeals

APPENDIX 10

IN REPETITION FOR APPEAL IN STATE SUPREME COURT

* * *

AMENDED ISSUE

The issue is the integrity of the law and our system of justice. This right predates the Constitution. It is a right that is reserved to the people as set forth in the Ninth Amendment to the Constitution of the United States. The issue involves the separation of the three branches of our government; the influence of a non-government entity upon the judicial branch of government. It involves the basic principle that there be three separate branches of government; that the judicial branch be free from the political influence which is inherent in the nature of the legislative and executive branches.

It involves the absence of "checks and balances" that would provide a check on that influence when it occurs in the legislative and executive branches.

It encourages a political oppression which becomes plenary; an oppression that has violated fundamental rights and is an unrestrained influence upon the judicial branch; an oppression that has no remedy in the law.

* * *

APPENDIX 11

TRIAL TRANSCRIPT

INDEX

Page
Trial Judge Changes Law 25a
Instruction Given..... 25a, 26a
Suppression of Evidence 26a

THE COURT: I suspect it ought to be the policy of the law to make some distinction between a person who is either incompetent or enfeebled and ill as opposed to a peron who creates a joint account as an able-bodied person in his youth with his eyes open. I don't know whether that is the law and whether that is what the Supreme Court contemplates. If it is not the law it ought to be the law. This is the instruction I would propose giving.

COURT'S INSTRUCTION NO. 1
(As Amended)

The Court instructs the jury that if you believe that the plaintiff was, at the time of the preparation of the signature card, enfeeble due to mental illness, or old age, then the law presumes that no such gift was made and the law places a heavy burden upon the person who claims to have received such a gift to overcome that presumption by evidence which is clear and convincing. If, on the other hand, the jury believes that the donor, that is to say the person giving the gift, was in proper possession of her mental faculties, and sufficiently aware of the events surrounding her so as to be able to transact her legal affairs, then, under those circumstances, the creation of a joint account raises a presumption that it belongs to both parties named on the account, unless this presumption is overcome by competent evidence.

Given. 1-30-84
Herman G. Canady, Jr., Judge

THE COURT: Court's Instruction No. 1 given as amended. I will note the plaintiff's objection and the defendant's objection.

SUPPRESSION OF EVIDENCE

THE COURT: The subpoena duces tecum requires only the routine production of the records. I think the subpoena in and of itself requires the production of a witness and you don't know who that witness is and what he will say. I don't think there is anything to rule on. To get this record straight I will overrule your motion and whatever it is. I don't think I am under any duty and compulsion to do anything. I will overrule the motion. I will note your objection and exception although I don't think I have anything to do and I have done that.

INDEX

Page

Witness—Testimony/Comments

Commissioner—
It would be in the best interest that Grace go with her sister. (Peggy).....29a

Plaintiff's Attorney—
"I think it's obvious that she seems comfortable with her sister." (Peggy).....29a

Bias—
Intervention — raises the issue of the civil action pending in Circuit Court 29a

Plaintiff's Attorney—
Recommending that Grace be confined to keep her in West Virginia 30a

Commissioner—
Rescinds his finding (43) and orders her confinement — to be examined at Shawnee Hills and then sent to State Hospital. Commissioner reverses his decision under the extra legal influence of defendant Bias upon a finding without additional evidence that she is likely to cause serious harm to herself. That she should be examined in a *State facility* contradicts a psychiatrist's finding that no confinement was needed, that she could be examined on an outpatient basis. A clear unequivocal violation of Grace's civil rights under "color of law." The Commissioner directed that Grace be examined at Shawnee Hills and again at the mental hospital, a confinement in the strict and obvious sense of the word and a direct and obvious vio-

lation of the confinement statute. The Shawnee Hills exam was never made. Instead Dr. Page Seekford, the *State* doctor, a crony of Bias was used. Why? Because Shawnee Hills is not subject to Bias' control or influence..... 30a

APPENDIX 12

BEFORE KANAWHA COUNTY
MENTAL HYGIENE COMMISSION

IN THE MATTER OF: GRACE K. WOLFE
Mental Hygiene Case No. 83-85

TRANSCRIPT OF PROCEEDINGS

Q. You're willing to take her and take care of her?

A. Yes, certainly.

Q. I want to ask her if she wants to go, but that would be my only question.

A. One time she'll say, "Yeah, I'll go with her right now," and the next time she'll say, "I want to stay in my house," but if she'll go with me, yes. I have a big home. I have a big yard all fenced, and I'm retired, and she practically raised me. She used to teach school when she was taking care of me.

COMMISSIONER HAYES: For the record, I think we're all agreed that it would be to Mrs. Wolfe's best interest if she went with her sister today. That would involve a finding of no probable cause, but again, with the understanding that if this needed to be brought again, it could be done. Mr. Hereford?

MR. HEREFORD: I think she's getting tired, and I think it's obvious that she seems to be comfortable with her sister here, and this sure won't eliminate any of her sister's other rights.

MR. BIAS: My name is Henry C. Bias, Jr., and I have in the past represented Mrs. Wolfe, and I represent Sylvia Allinder, who is her sister and who has her power of attorney.

We have in the past commenced a legal proceeding

in the Circuit Court of Kanawha County designated as Civil Action No. 83-C-206, where Mrs. Margaret (Peggy) Hedges is a Defendant. It seems that Mrs. Hedges came into the State of West Virginia sometime back from her home in Columbus and took $40,000 out of Mrs. Wolfe's bank account, and we have been trying for months to get the money back.

COMMISSIONER HAYES: Mr. Hereford, you obviously have the interest of the individual in mind. What is your thoughts on that?

MR. HEREFORD: The only thing I think would be important right now is that I think she probably does need some kind of medical assistance, but I don't think that necessarily means any kind of confinement. I think maybe for a period of observation; it would be fair to everyone. That way, she would remain in the State of West Virginia. She needs some help. I don't know if she wants to go out of the State or not, but I think maybe when she gets her feet back on the ground and feels a little bit better, then maybe she can make up her mind herself.

COMMISSIONER HAYES: Under the circumstances, I think my former finding has to be rescinded. I think there are factual matters which show that she perhaps is a danger to herself in her present condition and should be observed by a competent physician.

Also, I think that she should be examined locally before she is taken to a state hospital, at Shawnee Hills if they have a physician available. If not, perhaps Doctor Seekford will agree to examine her.

The physician's certificate is the second mentally ill, then she will be taken to the State Hospital at Huntington, where she will be examined again.

INDEX

	Page
Relationship of Parties	**32a-33a**
Appellant Care of Incompetent	**33a-36a**
State Plans Appellees Extradition	**36a-37a**
Appelles Care of Incompetent	**35a-36a**
Criminal Charge	**39a**

APPENDIX 13

Appellants Ohio Counsel Opposing Extradition

State of Ohio
Executive Department
Office of the Governor
Columbus, Ohio

Attn: Peter M. Sikora, Deputy Legal Counsel

Re Extradition of Margaret "Peggy" Hedges
AKA Mrs. Wendell Richard Hedges

Dear Mr. Sikora:

Pursuant to your letter of August 7, 1984 I hereby respectfully submit a statement (accompanied by supporting exhibits) asserting the grounds upon which the extradition of my client, Peggy Hedges, is being contested.

Statement of Background, History and Facts

At age 15, Peggy Hedges moved in and began living with Grace who had married Arnold Wolfe in 1927. At age 17 Peggy married Otis Dillworth. One child was born of this marriage which terminated in divorce 10 years later. She had lived with Grace intermittently for several years; most of that period was spent in Columbus, Ohio where she was attending Capital Beauty School. After two years of study at said school she received her cosmetology license and then went to California for advanced training at the Marinella Comer School of Cosmetology.

Grace Wolfe was a teacher by education and training. In 1930 she began work at the Kanawha County TB League (an affiliate of the Red Cross) and eventually became its Director. She served in this capacity until her retirement in 1975.

In 1948 Peggy Hedges returned to Capital Beauty School to become an Instructor. She spent ten years in this position during a period lasting until 1965. The other seven years of this interim were spent in and out of the country living with her husband at the time, Thomas Cook, a career Navy man. In 1965 she began work for F & R Lazarus, Columbus, Ohio, serving in specialized cosmetology functions until her retirement in 1980.

Over the years and during their careers Peggy and Grace stayed in constant contact with each other. Each spent many of their vacations visiting the other. Their relationship was and always has been a warm and close one. Here were two sisters who were very compatible and loved each other very much. There was never any serious alienations or discord between them. In contrast, Grace over the years spent very little time with her half-sister, Sylvia Allinder. There was a fifteen year disaparity of age between them. Their life long relationship can best be described as aloof, indifferent, distant, incompatible and detached.

Peggy initiated twice a month visits, spending a minimum during these visits of 3 days and a maximum of a week. Her round trip bus fare from Columbus to Grace's home (560 Staunton Avenue, Charleston, West Virginia) was $65.00. During these visits, since Grace due to her reaction to the stroke would not leave the house, Peggy did the grocery shopping (grocery bills were $100.00 a month), did all the washing and ironing, housework, cooking, dishwashing, bathed her, shampooed and cut her hair and at various times bought her slippers, robes, gowns and other personal items. These ministrations were performed twice a

month for three years and were done gratuitously and with a great amount of love and compassion. Because of the intensity of their mutual love and affection the matter of reimbursement was never comtemplated and therefore it was never broached. It should also be noted that during this same three year period, Sylvia Allinder, who only lived 25 miles from her half-sister, Grace, seldom if ever visited her and never did anything in recognition of and response to her needs and debilitations to alleviate her suffering and discomfort or to assuage her worry, apprehension and concern.

During her visits from 1979 through the greater part of 1981, Peggy perceived that Grace's health was slowly but insidiously deteriorating. During said period Grace, who had always been a very competent person, displayed an extraordinary amount of insight, common sense, pragmatism and prescience by frequently confiding in Peggy. The substance of these sharings was that she wanted to get her affairs in order, asserting that she was going to leave her entire estate to Peggy and telling her who was to handle the funeral arrangements and where she was to be buried. It was also mutually agreed and understood that as her infirmities exacerbated Grace would move to Columbus, Ohio and live with Peggy. The reason for this is that Grace through the years had constantly shared with Peggy her great fear of spending her declining years in a custodial milieu, be it a nursing home or a mental institution. Peggy had always reassured her that this would never be the case; that if she ever became unable to care for herself, that she would move in with Peggy who would care for her the remainder of her life.

These plans of Grace reached fruition in the latter part of 1981. On September 28th of that year, Grace made out her will leaving everything to Peggy. (Exhi-

bit A) A month later she gave Peggy a General Power of Attorney. (Exhibit B) During Peggy's visits in 1980 and 1981 Grace had often stated that she had two bank accounts with Kanawha Banking & Trust Co., Charleston, West Virginia, and that she wanted to change them into joint and survivorship accounts with Peggy as the survivor thereon. She effectuated this on March 17, 1982. On that date she requested that Peggy go to said bank and secure the necessary signature cards and agreement. Peggy did this and returned with them to Grace's home. They then both signed the cards and Peggy returned them on the same date to the bank. (Exhibit C & D) Present besides Grace and Peggy in Grace's home on this day was Linda Jacobs, Peggy Hedges' daughter. Sylvia Allinder, who as previously noted lives in Buffalo, West Virginia, 25 miles from Charleston, was not present. (Exhibit E & P, Affidavits of Linda Jacobs and Peggy Hedges)

Sylvia Allinder wasted no time in securing herself as Attorney-In-Fact for Grace by General Power of Attorney executed on September 23, 1982. (Exhibit H) She retained attorney Henry Bias, a Charleston attorney, to perform this legal service; on this date Mr. Bias came to Grace's house and not only had the prepared Power of Attorney executed but he also had Grace execute a will which left all of her property to Sylvia. Both documents were witnessed by office personnel from Attorney Bias's office. Grace's previous will and power of attorney (Exhibits A & B) had been witnessed by her neighbors. The execution of these documents was completely inconsistent with and in direct contravention of Grace's testamentary intentions. As mentioned before, the relationship of Grace and Sylvia had always been one of aloofness, indifference and detachment.

Peggy Hedges remained in Columbus until March of 1983 when she was summoned by Law Enforcement Officials to Grace's home. When she entered the house she found the interior to be in a deplorable and neglected condition; Grace was a pitiful sight, being in a malnourished and life threatening state. From the condition of the house and Grace, no one had visited with her since Peggy's last visit. It could certainly be concluded and inferred from such a denigrating and dehumanizing set of circumstances that Sylvia after getting Grace to sign the new will and power of attorney had completely and callously abandoned her. But this is not shocking. Sylvia Allinder had accomplished what she had intended to accomplish when she entered Grace's home in the latter part of August, 1982.

Law and Argument

I. **GROUND OF CONTESTATION NO. 1:** An offense is not charged under the laws of West Virginia which is demanding extradition.

By utilization of syntactical and linquistic legerdemain the Prosecutor of Kanawha County has feebly attempted to circumvent the above noted criminal statute and the requisite *present intent* thereunder, as so held by *State v. Smith* (Supra). He does this by *contriving one separate offense* through the combining of *two separate transactions that occurred approximately 6 months apart,* to wit, the signature of the cards on *March 17, 1982* and the withdrawal of the money on *September 3, 1982.* (Emphasis Added) This fails on account of the holding of *State v. Smith.* Any mens rea or culpable mental state of false pretense and intent to defraud with the resultant and concomitant and immediate obtaining of

money had to be present on March 17, 1982. Such culpable mental state cannot be ascertained by delving into the inner recesses of the intangible constructs comprising the mind. It must be ascertained by the objective theory and rule of law that determines human intent, i.e., the overt behavioral manifestations of the person involved.

What were those behavioral manifestations? They are obvious and undisputed and in total derogation of the requisite mens rea. Peggy Hedges did not withdraw any monies from the accounts during the relevant six month period. Instead, she continued to visit her.

The warrant recites that Sylvia Allinder, as Committee for Grace Wolfe, made complaint and information on oath that Peggy Hedges did commit a felony, in that on *March 17, 1982,* she did unlawfully and feloniously obtain from said Grace C. Wolfe $40,000.00 by false and fraudulent representations, to wit, inducing her to sign a joint bank card which she then used on *September 3, 1982* to wrongfully withdraw $40,000.00 from Grace C. Wolfe's account at Kanawha Banking & Trust Company. (Emphasis Added)

The criminal statute involved in West Virginia Criminal code, Sec. 61-3-24, as amended in 1981, (Exhibits M & N) which makes it a crime for a person to obtain from another, by any false pretense, token or representation, with intent to defraud, money, goods or other property which may be the subject of larceny. To warrant conviction under this section the accused *must have had the present intent to commit the offense at the time.* (Emphasis Added), *State v. Smith, 9 W. Va. 313, 125 S. E. 90.*

V. GROUND OF CONTESTATION NO. 5: The integrity and intent of the Uniform Criminal Extradition Act will be greated vitiated, perverted and compromised if this request for extradition is honored and granted by the Governor of Ohio.

This final ground is offered as a concatenation and compendium of the facts, circumstances, inferences, deductions, law and legal arguments that have preceded it in the "Statement of Background, History and Facts" and the four other "Grounds of Contestation". To dignify this request for extradition by indulgence in further claboration of this affront to the Office of Governor of Ohio and one of its good and law abiding senior citizens disposition of Mrs. Hedges' civil appeal. Ohio should not be a party to or a pawn of such aberrant and injudicious maneuverings.

IV. GROUND OF CONTESTATION NO. 4: The request for extradition herein is not being made in good faith but rather has been initiated by perjury and the abuse of process.

As noted before, the warrant for Mrs. Hedges' arrest (Exhibit L) was made under oath by Sylvia Allinder, as Committee, that said Peggy Hedges on March 17, 1982 by false and fraudulent representations induced Grace Wolfe to sign a card establishing a joint bank account. This was a lie and constitutes a crime under West Virginia law. During the five day civil trial there was no evidence that Mrs. Hedges forged Grace's signature or tricked her into signing the signature cards. (Page 2, Exhibit K and Exhibit O, Affidavit of Leland Sloan, Attorney at Law.) In addition, the only people present in Grace's home on March 17, 1982 at the time of the signing of the cards were Grace Wolfe, Peggy Hedges, and Linda Jacobs. (Exhibits P & E, Affidavits of Peggy Hedges and Linda Jacobs.) *Sylvia Allinder was not there at any time during that day!*